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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Subscriber Carrier) CC Docket No. 94-129
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

COMMENTS OF
360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹ hereby respectfully submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.² The Commission's proposed "slamming" rules must adequately protect consumers from unauthorized changes to their preferred telecommunications carrier, while ensuring that consumers also receive the benefits of competition. As set forth below, while 360° supports the Commission's goals in this proceeding, it urges the Commission to modify

¹ 360° Communications Company is the country's second largest publicly held cellular provider. The company offers wireless voice and data services to 2.4 million customers in more than 100 markets throughout 15 states. The Company's subsidiary, 360° Long Distance, Inc., also provides residential long distance service on a resale basis to customers in approximately 47 states.

² *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, FCC 97-248 (rel. Jul. 15, 1997) ("*Further Notice*" or "*FNPRM*").

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several of its proposals in a manner that removes unnecessary barriers to legitimate carrier changes and that promotes competition among carriers.

I. INTRODUCTION

As the Commission and Congress have recognized, slamming -- the unauthorized changing of a customer's telephone carrier -- is an increasing problem that frustrates consumers and limits legitimate competition among telecommunications carriers. In order to enable the Commission to combat this problem more effectively, Congress enacted Section 258 of the Communications Act, which requires all telecommunications carriers to submit and execute changes to a customer's service provider in accordance with certain verification procedures.³ Section 258 further provides that carriers who violate these procedures are liable to the subscriber's authorized carrier for all charges collected.⁴

In implementing Section 258, the Commission must ensure that its rules protect consumers from unauthorized carrier changes and preserve the pro-consumer benefits of legitimate competitive practices. Vigorous competition in the market for long distance services from carriers such as 360° results in lower prices and a greater diversity of services. However, the Commission must recognize that slamming rules may substantially affect this competitive market by restricting business practices that allow consumers to switch between competing service providers. Accordingly, it should carefully consider the impact of its proposed rules on fair competition and consumer choice.

³ 47 U.S.C. § 258(a).

⁴ 47 U.S.C. § 258(b).

To this end, 360° offers the following recommendations: (1) the welcome package verification option is a legitimate practice that should be retained; (2) a customer should be permitted to remove a preferred carrier freeze either by contacting the local exchange carrier directly or through a signed letter of agency; (3) executing carriers should be required to process customer preferred carrier changes within a reasonable time; and (4) verification procedures are not necessary for in-bound customer requests to change service providers. In addition, the Commission should clarify that commercial mobile radio service providers are not subject to verification and notification requirements when they change an underlying long distance network provider.

II. THE COMMISSION SHOULD ENSURE THAT ITS SLAMMING RULES DO NOT HINDER CONSUMERS' ACCESS TO COMPETING CARRIERS

A. The "Welcome Package" Verification Option Should Be Retained As a Means to Verify Preferred Carrier Change Requests

360° strongly disagrees with the Commission's tentative conclusion that the "welcome package" verification option should be eliminated.⁵ The Commission bases this proposal on the concern that this option operates in the same manner as a negative-option letter of agency (LOA), which the Commission has already prohibited under its rules as an unreasonable practice.⁶ Yet, given the fundamental difference between a welcome package and a negative-option LOA, the Commission's concern is misplaced.

⁵ *FNPRM*, ¶ 18.

⁶ *Id.*

Indeed, a customer receives a welcome package only after it has agreed to change its preferred service provider. Unlike a negative-option LOA, the welcome package merely *verifies* a customer's request to change carriers and thus does not create an opportunity for slamming. Further, a welcome package is an efficient method for consumers to obtain additional, detailed information about their new provider's services and documentation of their selection. There simply is no basis for concern that this information would result in customer confusion or facilitate unauthorized carrier changes. Accordingly, the welcome package should be retained.

B. Customers Should Be Permitted to Remove a Preferred Carrier Freeze By Using a Letter Of Agency

In the *Further Notice*, the Commission correctly recognizes that preferred carrier freeze (PC-freeze) policies must adequately balance the need to protect consumers from slamming with the limiting effect that these policies have on competition among carriers. As the Commission points out, PC-freeze policies may hinder competition because many consumers are reluctant or unwilling to take the affirmative steps necessary to lift the freeze, even when they wish to change providers. Under existing PC-freeze practices, a customer must contact its current carrier to lift the freeze before the customer's new preferred carrier can submit the change order. 360° submits that such practices decrease competition and consumer choice, thereby depriving customers of flexibility to select a new carrier. To remedy these concerns, the Commission should permit customers to remove a PC-freeze through a signed letter of agency (LOA).

Under this approach, executing carriers would be required to lift a PC-freeze upon receipt of a signed LOA from a customer, which indicates that the customer seeks to change its preferred carrier. Further, an executing carrier would be required to honor such a request regardless of whether it is submitted by the subscriber or another carrier. The written confirmation in the LOA provides a reliable and accurate method of assuring the executing carrier that the consumer wishes to remove its PC-freeze to change preferred carriers, thereby giving customers increased flexibility without lessening protections against slamming.

C. Preferred Carrier Changes Should Be Processed In a Timely Manner

Consistent with the objective of preventing slamming, the Commission's rules also should guarantee that consumers can change service providers in a timely manner after executing a legitimate request. 360° continues to experience difficulties with local carriers that either refuse to honor a customer's request to use 360°'s long distance service or unreasonably delay processing of such requests. These problems frustrate consumers by denying them timely access to their preferred carrier. They also clearly reduce competition. Accordingly, the Commission should clarify that an executing carrier has an obligation to process a customer's preferred carrier change request within a reasonable time after receiving the verified request.⁷

⁷ Along similar lines, 360° agrees with the suggestion in the *Further Notice* that executing carriers should not be subject to independent verification requirements. *FNPRM*, ¶ 14. As the Commission points out, such requirements would impose costly, duplicative requirements on carriers and consumers alike with no likely impact on slamming. *Id.*

D. Verification Procedures Are Not Needed For Customer-Initiated Requests To Change Service Providers

The Commission tentatively concludes that the verification procedures applicable to preferred carrier changes also should be applied to in-bound calls from a customer requesting a carrier change.⁸ It explains that, without such a requirement, carriers may be encouraged to use an in-bound customer request as an opportunity to switch customers to other types of telecommunications services provided by that carrier.⁹ 360° disagrees. There is no legitimate basis to believe that an incentive exists to slam newly-acquired customers with other services. Moreover, applying verification procedures to in-bound customer requests will impose substantial costs on service providers without a corresponding public benefit. As a relatively small carrier, the substantial costs associated with in-bound call verification would put a disproportionately heavy burden on 360° and place it at a competitive disadvantage vis-a-vis large, incumbent providers.

III. THE COMMISSION MUST CLARIFY THAT CMRS PROVIDERS ARE NOT SUBJECT TO VERIFICATION OR DISCLOSURE REQUIREMENTS WHEN THEY CHANGE AN UNDERLYING LONG DISTANCE PROVIDER

The Commission seeks comment on its tentative conclusion that it should adopt a "bright line" test to determine the circumstances under which a resale carrier must notify its

⁸ *FNPRM*, ¶ 19.

⁹ *Id.*

subscribers of a change in an underlying telecommunications network provider.¹⁰ Specifically, this test would be based on the subscriber's reliance on statements made by the resale carrier that it either: (1) would provide service using a particular underlying carrier, or (2) would not change the underlying carrier, with or without notifying its subscribers.¹¹ However, the Commission must clarify that such verification and notification rules would not apply to commercial mobile radio service (CMRS) providers that offer resold long distance services as an ancillary component of their CMRS services.

Long distance service provided in conjunction with CMRS services is clearly ancillary to the wireless service being provided. A customer signs up with a particular CMRS carrier based upon the nature and quality of the wireless service being offered, not for the particular long distance carrier used to complete the calls. Indeed, mobile subscribers often have no customer relationship with, and no strong reliance interest in, the underlying long distance provider.

Further, CMRS customers generally do not choose their long distance provider. The Communications Act expressly states that CMRS carriers do not have "equal access" obligations.¹² The idea of a presubscribed carrier – the basis for the verification and notification requirements at issue – simply is not relevant in the CMRS context. As such, imposing these unnecessary requirement on wireless carriers would plainly be unduly burdensome. The Commission should therefore clarify that CMRS providers are not subject

¹⁰ *FNPRM*, ¶ 38.

¹¹ *Id.*, ¶ 39.

¹² *See* 47 U.S.C. § 332(c)(8).

to verification or notification obligations when changing their underlying long distance provider.

IV. CONCLUSION

In implementing the provisions of Section 258, the Commission must remove the incentives and opportunities for slamming, while permitting consumers to receive the benefits of competition. To this end, 360° submits that adoption of the recommendations described above will facilitate achieving this goal.

Respectfully submitted,

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September 15, 1997